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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,650

12/30/2003

Lec Delson Wilhelm

19,927

6898

23556

7590

01/28/2008

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EXAMINER

AFZALI, SARANG

ART UNIT

PAPER NUMBER

3726

MAIL DATE

DELIVERY MODE

01/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/748,650

Applicant(s)

WILHELM, LEE DELSON

Examiner

Sarang Afzali

Art Unit

3726

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____.
13. ☐ Other: _____.


DAVID P. BRYANT
SUPERVISORY PATENT EXAMINER

1/24/08

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's argument regarding the indefiniteness of claims 1-16 and 20 is persuasive and as such, the rejection of claims 1-16 and 20 under 35 USC 112, second paragraph as outlined in the office action mailed on 12/31/2007, is withdrawn. However, the rejection of claims 1-16 and 20 as being obvious over Boegli and further in view of Makoui et al. are still valid and pending.

The Applicant in a response dated 1/18/2008 (page 2, paragraphs 2-4), is mostly arguing that "Nothing in the teachings of Boegli suggests an embossing roll surface having elongated curvilinear embossing elements, The truncated pyramid- shaped teeth of Boegli are not elongated and they are not curvilinear." and further argues that the general statement in paragraph [0035] of Boegli "does not make Applicant's claimed element designs obvious. While there may be some suggestion to modify the dimensions of the height of the truncated pyramid elements, there is no suggestion to deviate from the pyramid shape. Fundamentally, there is no suggestion to provide elongated elements. There also is no suggestion to provide curvilinear elements. Put visually, the flower design of Applicant's Figure 2, which is representative of Applicant's claimed subject matter, is not obvious from the embossing roll pattern of roll 2 of Figure 1 of Boegli."

The Applicant further argues that "With specific reference to Applicant's independent claim 2, there also is no suggestion in the teachings of Boegli to provide a split embossing element having a gap as claimed. The truncated pyramid elements of Boegli do (to) not have a gap, but instead have a flat top surface." and that "In addition to the obvious structural differences between the truncated pyramid embossing elements of Boegli and the elongated curvilinear embossing elements of Applicant's invention, the apparatus of Boegli is intended for an entirely different purpose than that of Applicant's apparatus" and that "what might be an obvious matter of design choice for purposes of Boegli would not be useful or relevant for Applicant's apparatus, which is designed for a very different purpose."

The Examiner respectfully disagrees with the above arguments. Note that Boegli in paragraph [0035], lines 6-12, clearly teaches that through variations of the teeth (8), i.e. by modifications of height (emboss element depth), of the flanks (side walls) or the edges (width and length of the top flat surface) of the teeth or through patterns provided on the upper surface thereof, desired embossed patterns may be produced. Boegli further teaches in paragraph [0035], lines 16-20, that the design of individual teeth may differ from that of the remaining elements. As such, the Examiner considers that the emboss elements of Boegli can be in shapes other than truncated pyramids. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have provided Boegli with the profile details as claimed by the Applicant in order to provide a desired embossed patterns and appearance.

As for the argument that the apparatuses of Applicant and Boegli are intended for entirely different purposes, the Examiner believes that Boegli teaches that the tooth profile can be modified into a variety of configuration resulting in any desired embossed patterns that would be viewed differently under certain conditions. Furthermore, the Applicant's objective is to improve the appearance or embossing definition produced in the substrate by the embossing process (specification, page 1, lines 30-31). Boegli teaches that the viewing of the embossed patterns under certain conditions (lighting and angle) can be improved. As such, Boegli is pertinent to the problem with which the instant invention was concerned with, which is mainly to improve the appearance or embossing definition produced by the embossing apparatus. Finally, it is noted that the particular use of Applicant's embossing roll is not currently claimed.

Makoui et al. is relied upon to only teach that it is well known to use metal alloys in an embossing roll.